

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

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|----------------|---|----------------------------------|
| JUAN P. RUBIO, |) | |
| |) | |
| Plaintiff, |) | Civil Action No. 7:21cv00555 |
| |) | |
| v. |) | <u>MEMORANDUM OPINION</u> |
| |) | |
| W.R. HENSLEY, |) | By: Hon. Thomas T. Cullen |
| |) | United States District Judge |
| Defendant. |) | |

Plaintiff Juan P. Rubio, a Virginia inmate proceeding *pro se*, filed this civil action under 42 U.S.C. § 1983. On June 29, 2022, defendant Hensley filed a motion for summary judgment, and on June 30, 2022, the court issued a notice pursuant to *Roseboro v. Garrison*, 528 F.2d 309, 310 (4th Cir. 2005). (*See* ECF Nos. 21–23.) The *Roseboro* notice gave Rubio 21 days to file a response to the motion for summary judgment and advised him that, if he did not respond to the defendant’s motion, the court would “assume that Plaintiff has lost interest in the case, and/or that Plaintiff agrees with what the Defendant states in their responsive pleading(s).” (*See* ECF No. 23.) The notice further advised Rubio that, if he wished to continue with the case, it was “necessary that [he] respond in an appropriate fashion,” and that if he failed to file a response to the motion within the time allotted, the court “may dismiss the case for failure to prosecute.” (*Id.*) Rubio did not respond to the defendant’s motion and, therefore, the court will dismiss this action without prejudice for failure to prosecute.

ENTERED this 27th day of September, 2022.

/s/ Thomas T. Cullen
HON. THOMAS T. CULLEN
UNITED STATES DISTRICT JUDGE